employment of female workers, which came into force on 1 August 2001. In that regulation exceptions from the employment prohibition are made merely for women, inter alia, in managerial positions, and trainees.

The directive does indeed itself contain certain restrictions concerning the prohibition of unequal treatment (Article 2(2) and (3) of the directive), but in the present case they cannot be applied in order to justify the prohibition of employment in issue. Although activities carried out underground in the mining industry are physically and mentally extremely demanding, they are not activities which can be carried out only by men. It is not therefore possible to rely on the argument that, by reason of the nature or context in which they are carried out, the sex of the worker constitutes a determining factor. The dangers to which women are exposed by working in mines are generally, in essence, no different from those to which men are also exposed. These dangers do not therefore justify any different treatment of men and women. Inasmuch as the Austrian Government refers simply to the generally weaker constitution of women in comparison with men, the Commission cannot accept that argument. It cannot be ruled out that there are female workers for whom employment in mining underground is less oppressive than for a comparable male worker with a lesser physical constitution. A general prohibition of employment of women in mining underground is therefore disproportionate.

Moreover, it is necessary to adjust the Austrian rules to the directive even if the mining industry is in decline; otherwise the practical effect of the prohibition of discrimination under Community law would be impaired.

Finally, the Austrian Government misses the point in arguing that it is bound by the ILO Convention concerning the Employment of Women in Underground Work and Mines of 1937 and that therefore Community law does not preclude the employment prohibition in question. The Republic of Austria must, however, denounce that Convention.

— The prohibition of employment of women in work involving compressed air and diving:

As regards the rules on the employment of women in work involving compressed air and diving, a general prohibition of the employment of women, without any examination of the individual case, cannot be justified by the alleged special need for the protection of women.

(1) OJ 1976 L 39, p. 40.

Reference for a preliminary ruling by the High Court of Justice (England and Wales), Chancery Division, by order of that court dated 7 December 2000, in the case of Commissioners of Customs and Excise against SmithKline Beecham plc

(Case C-206/03)

(2003/C 158/27)

Reference has been made to the Court of Justice of the European Communities by an order of the High Court of Justice (England and Wales), Chancery Division, dated 7 December 2000, which was received at the Court Registry on 14 May 2003, for a preliminary ruling in the case of Commissioners of Customs and Excise and SmithKline Beecham plc on the following questions:

1) Is Heading 3004 of annex I to Council Regulation No 2658/87 [1], as amended, to be interpreted as including a product in the form of a nicotine patch to be used to assist when trying to stop smoking, consisting of an adhesive-plaster impregnated with nicotine which is absorbed through the skin/presented in a foil pack?

2) In circumstances where

   (a) a customs authority of a Member State has given binding tariff information pursuant to article 12 of Council Regulation 2913/92 [2] (the Customs Code) in respect of a product;

   (b) the binding tariff information in question is consistent with a classification opinion previously published by the World Customs Organisation and referred to in a communication by the Commission pursuant to article 12(5) of the Customs Code;

   (c) the importer appeals to a national tribunal pursuant to article 243 of the Code; and

   (d) the tribunal disagrees with the classification opinion;

is article 12(5) of the Code to be interpreted as requiring or permitting the Tribunal to annul the customs authority's decision without -substituting binding tariff information inconsistent with the classification opinion of the World Customs Organisation but declaring that the product is properly classifiable otherwise than in accordance with that opinion?

(1) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff OJ L 256, 7.9.1987, p. 1.

(2) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code OJ L 302, 19.10.1992, p. 1.